## Re Application by TENGKU AHMAD TAJUDIN bin Tengku Ibrahim

**[O.C.J. (Edgar Joseph Jr. J.) May 5, 1984]**
**[Penang – Originating Summons No. 141 of 1980]**

*Trust – Settlement – Conveyance of property to daughter for her life and after her decease to her daughter and each and every other future child of hers and from and after death of survivor to the next of kin of the daughter – Meaning of next of kin – Stirpal division indicated in deed – Property vested by order of court in surviving son of daughter's daughter – Application by grandchildren whose fathers predeceased the daughter's daughter, their grandmother, to set aside resting order – Whether triable issue raised.*

In this case one Tunkoo Yacoob made a deed of settlement of land in favour of his daughter Che Rogoan "to hold the said premises unto the said Che Rogoan for her life and after her decease to her daughter Tunku Ayesha and each and every other future child of the said Rogoan for and during the life of survivors of such children (but so that the children of any such child who shall die before such survivor shall during the life of such survivor take equally between them the share which their parent would have taken if living) and from and after the death of such survivor unto the next of kin of the said Rogoan."

Che Rogoan died in 1962 and Tengku Ayesha, her only daughter, died in 1975. Tengku Ayesha left her surviving, Tengku Ahmad Tajudin. She also had two other sons, who predeceased her, but leaving children, one of whom is the applicant.

After the death of Tenku Ayesha, Tengku Ahmad Tajudin obtained on the 2nd May, 1980, an *exparte* order of court vesting the land in himself as "the only next of kin and male heir of the said Che Rogoan."

In the present application, Tengku Ibrahim, applied by Summons in Chambers that the order of the 2nd May, 1980 be discharged and set aside and that the said lands "be reverted and restored to the status prior to the said order to enable the various parties to establish their respective claims thereto."

**Held:** (1) the conveyance should be construed according to the principles of English Law, regard being had to the fact that at the time of its execution, the Statute of Distributions applied to Penang;

(2) had the trust been for the next of kin of Che Rogoan without more it would have meant a trust for her blood relations so that Tengku Ahmad Tajudin would *prima facie* have taken to the exclusion of all others but the context of the conveyance does contain more. The effect of words used in the settlement was clearly to confer a gift on two or more persons with a substantial gift to the children of such of them that shall die before the gift takes effect so that distribution takes place per stirpes. Where a stirpal division is once indicated, the Court will lean to a stirpal division throughout; (3) the application in this case has raised trible issues or at least serious questions to be investigated and therefore the *ex parte* order dated 2nd May 1980 could not stand.

*Cases referred to:*

(1) *Re Alkaff Settlements* 29 S.S.L.R. 188.
(2) *Re Estate of Haji Tamby bin Haji Mohamed Saleh* [1932] M.L.J. 46.
(3) *Re Shaikh Salman bin Abdul Shaikh bin Mohamed Shamee* [1953] M.L.J. 200.
(4) *Lee Joo Neo* v. *Lee Eng Swee* 4 Ky. 325.
(5) *Re Hart's Will Trusts, Public Trustee* v. *Barclays Bank Ltd.* [1950] Ch. 84.
(6) *Re Kilvert, Midland Bank Executor and Trustee Co. Ltd.* v. *Kilvert* [1957] Ch. 388.
(7) *Re Gray's Settlement, Akers* v. *Sears* [1896] 2 Ch. 802.
(8) *Re Jackson, Holliday* v. *Jackson* [1943] 113 L.J. Ch. 78.
(9) *Cotton* v. *Scarancke* (1815) 1 Madd. 45; 56 E.R. 18.
(10) *Eagles* v. *Le Breton* (1873) L.R. 15 Eq. 148
(11) *Williams* v. *Ashton* 70 E.R. 685.
(12) *Seale-Hayne* v. *Jodrell* [1891] A.C. 304.
(13) *Doe* d. *Winter* v. *Perratt* 134 E.R. 914.
(14) *Re Smythe, Guiness* v. *Smythe* [1932] I.R. 136.
(15) *Boyle* v. *Sacker* (1888) 39 Ch. D. 249, 252.
(16) *The Hagen* [1908] P. 189, 201.
(17) *Lazard Bros. & Co.* v. *Midland Bank* [1933] A.C. 289, 307.

CIVIL SUIT.

*Ong Eng Kuan* for the applicant.
*W. S. W. Davidson* for the respondent.

*Cur. Adv. Vult.*

**Edgar Joseph Jr. J.**: Nearly eighty-eight years ago when Tunkoo Yacoob bin Zeynal Rashid of the Royal House of Kedah walked into the offices of Mr. Edmunda Jeremiah, reputed solicitor of Georgetown, Penang to execute a deed of Conveyance of certain valuable lands in Northam Road (the disputed properties) whereby he intended to benefit, amongst other persons, his daughter Che Rogoan and her daughter Che Ayesha, he little thought that six words in it would one day give rise to hotly contested proceedings in a Court of Law to discover their true meaning and effect but, in the events that have transpired, this is precisely what has happened.

It will be convenient to set out, *in extenso*, the provisions of the Conveyance*:

*"Know all men by these presents* that I *Tunkoo Yacoob* bin Zeynal Rashid of Kedah in consideration of my natural love and affection for my daughter *Che Rogoan*, wife of Tunkoo Abdul Aziz, Rajah Mudah of Kedah aforesaid *do* hereby convey unto the said Che Rogoan *All those*

* This conveyance was "Registered this 14th day of August, 1896 at 1.10 p.m. in the Registry of Deeds, Penang.

*three pieces* of land adjoining one-another and forming one connected piece situate on the South side of Northam Road in the district of Teluk Ayer Rajah in Penang being parts of the lands comprised in Government Grants Nos. 576 and 556 and being the whole of the land acquired right to by me the said Tunkoo Yacoob bin Zeynal Rashid together with my Wife, Inche Zohana binte Punghulu Mahomed Syed (since deceased) as joint Tenant by deed poll dated 19th August 1886 Reg. No. Vol. Page which said piece of land formed as aforesaid with the two dwelling houses thereon is now known as Lot 138 of Town Subdivision XIII. *To hold* the same premises unto the said Che Rogoan for her life and after her decease to her daughter Tunku Ayesha and each and every other future child of the said Che Rogoan for and during the life of survivors of such children (but so that the children of any such child who shall die before such survivor shall during the life of such survivor take equally between them the share which their parent would have taken if living) and from and after the death of such survivor unto the next of kin of the said Che Rogoan.

*In witness whereof* I have hereunto set my hand and seal this 23rd day of July 1896.

Signed sealed and delivered
in the presence of

(Sgd.) Edmunda B. Jeremiah (Sgd.) xxxx"

The next document of relevance was an Indenture dated February 20, 1929, whereby the said Che Rogoan terminated her life interest in favour of her daughter Tengku Ayesha.

In the fullness of time Che Rogoan died in 1962 and Tengku Ayesha in 1975. Then Che Rogoan's grandson, Tengku Ahmad Tajudin, applied by *ex parte* Summons-in-Chambers dated March 27, 1980 and on May 2, 1980 obtained the following Orders:

"1. That upon the cesser of interest of Che Rogoan, the first life tenant and upon the subsequent death of Tunku Ayesha also known as Tunku Aishah bt. Tunku Abdul Aziz, the second life tenant of the Settlement created by Deed of Conveyance dated the 23rd day of July, 1896 (Reg. Vol. LIII No. 168), the Applicant Tengku Ahmad Tajudin Haji bin Tengku Ibrahim, the only child and son of Tengku Ayesha also known as Tunku Aishah bt. Tunku Abdul Aziz be declared the only next-of-kin and male heir of the said Che Rogoan.

2. That the land and hereditaments known as Holding No. 138 T. S. 13 N.E.D., Penang with premises Nos: 49 and 51 Northam Road, Penang do vest unto the Applicant, Tengku Ahmad Tajudin Haji bin Tengku Ibrahim absolutely as the only next-of-kin of Che Rogoan to end the Settlement.

3. That the Applicant be permitted to cancel and delete the words "Perentah Mahkamah Originating Summons No. 152/79" from the Memorandum of Transfer dated 11th, June 1979 and in its place be permitted to register a stamped copy of this Vesting Order to enable KAF Land Sdn. Bhd. to be registered as purchaser and proprietor thereof.

4. That the Registrar of Land Titles, Penang may be directed to do all things necessary to give effect to the Orders made herein."

That Originating Summons was followed by three applications which were before me, particulars of which were as follows:

The first application by Summons-in-Chambers by Tengku Ibrahim bin Tengku Izaham (En. 7) prayed for the following Orders, namely, that:

(a) the Order made herein on May 2, 1980 pursuant to an *ex parte* application whereby the disputed properties were vested in Tengku Ahmad Tajudin Haji bin Tengku Ibrahim on the ground that he was the sole remainderman under the Indenture dated July 23, 1896 be discharged and set aside;

(b) all memorials pursuant and subsequent to the said order made in the Interim Register be cancelled and the said lands be reverted and restored to the status prior to the said order to enable the various parties to establish their respective claims thereto.

The second application by Summons-in-Chambers by KAF Land Sdn. Bhd. (Encl. 13) prayed for the following Orders, namely, that the Summons-in-Chambers (Encl. 7) and the service thereof on KAF Land Sdn. Bhd. be set aside on the ground that the same are a nullity as the Applicant does not have the Court's leave to intervene in Originating Summons No. 141 of 1980; that in the meantime further proceedings in this matter be stayed.

The third application by Summons-in-Chambers by Tengku Ibrahim bin Tengku Izaham (Encl. 19) prayed for the following Orders, namely, that the Originating Summons and all subsequent proceedings be amended by adding the name of the Applicant as a defendant, on the ground that the Applicant was at all material times a person interested in the reliefs sought in this Originating Summons and whose proprietary rights have now been affected by the said Order.

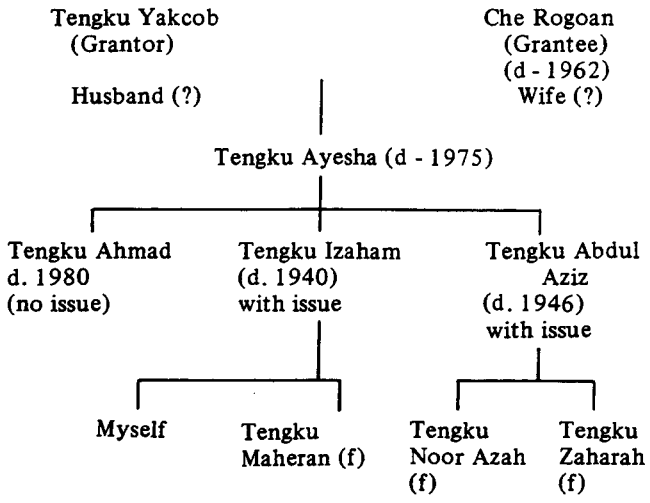
It will also be convenient to set out *in extenso* the affidavit of Tengku Ibrahim affirmed to on June 21, 1982 in support of the first application (En. 7). Shorn of formal and introductory parts it reads as follows:

2. I crave leave to refer to the Ex-parte Order made herein on the 2nd day of May 1980 (enclosure 3) on the application of Tengku Ahmad Tajudin Haji bin Tengku Ibrahim (the Deceased). Tengku Ahmad Tajudin Haji bin Tengku Ibrahim died on July 31, 1980 and a copy of his death certificate is annexed hereto marked "TI-1".

3. I have also applied to the High Court at Kuala Lumpur vide Petition No. of 1982 and have been granted the letters of administration to the Estate of Tengku Ahmad Tajudin Haji bin Tengku Ibrahim, deceased. The grant has not been extracted as yet.

4. In these proceedings (enclosure 1) the Deceased applied to this Court *inter alia* for an Order that he be vested with the lands known as Lot 138 T.S. XIII under Grant Nos. 576 and 556 in the North Eastern District Penang (the said lands) on the grounds that he was the sole ultimate remainderman under the Indenture dated 23rd July, 1896. A copy of the Indenture had been annexed to the Affidavit of the deceased affirmed on the 15th day of April, 1980 (enclosure 2).

5. Under the term of the said Indenture the ultimate remaindermen are the next of kin of the Original Grantee, Che Rogoan. Tengku Ahmad Tajudin Haji bin Tengku Ibrahim was not the sole next of kin of Che Rogoan at the time of the death of the life tenant, Tengku Ayesha. The family tree is as follows:




6. As at the death of Tengku Ayesha, I am advised that the children of Tengku Izaham deceased and Tengku Abdul Aziz deceased were next of kin of Che Rogoan together with Tengku Ahmad within the meaning of the term in the Indenture dated 23rd July 1896.

7. I am advised and I verily believe that the Muslim law of succession has nothing to do with the devolution of the various interests under the deed. The fact that my sister and cousins are not 'beneficiaries' under the Muslim law of succession does not prevent them from being next of kin within the meaning of the deed.

8. I did not know about these proceedings until after the death of the deceased Tengku Ahmad when I made equiries and discovered the matters.

9. I am making the present application on behalf of the said Tengku Maheran, Tengku Azah and Tengku Zaharah as well as on my own behalf and they are supporting this application.

10. I have been advised that the said Order dated 2nd May 1980 was made on the basis that there was no other next of kin other than the applicant, and would not have been made if all the facts including the existence of the other next of kin had been put before the Court.

11. After obtaining the Order dated 2nd May 1980, the said lands were transferred to a company known as KAF land Sdn. Bhd, a company which is wholly or substantially owned by Puan Khatijah binte Ahmad and Puan Rokiah binti Ahmad, both of whom had been informally adopted by the Deceased. I have reason to believe that it was the said Puan Khatijah and the husband of the said Puan Rokiah, one Zulkifli bin Ishak, who induced the Deceased to initiate the application in order to secure the said lands to the exclusion of the other next of kin.

12. I believe that the only evidence produced in support of the said application for the vesting order apart from the Deceased's own affidavit was the statutory declaration of Tun Azmi b. Hj. Mohamed which does not deal with the problem of 'next of kin' as appears in the Indenture.

13. I am advised and I verily believe that:

(a) the other next of kin and I ought to have been joined as parties and if there was any doubt of lack of knowledge the most prudent course could have been to advertise the application so that there could be notice to those affected; no such course was adopted in the instant case.

(b) the order also adversely affects the interest of the other next of kin including myself.

14. If the vesting order is set aside, the lands would be restored to the position immediately prior to the Vesting Order. This would then enable the parties to litigate their respective claims to the said lands.

15. Paragraph 4 of the said affidavit of Tengku Ahmad refers to the grant of letters of administration taken out by him to his mother's estate. In fact the grant was obtained by his attorney the said Zulkifli bin Ishak on a power of attorney granted to him by Tengku Ahmad. That Power of Attorney did not authorize Zulkifli to apply for letters of administration to the estate of Tengku Ayesha. Under the said Power of Attorney, the power to procure letters of administration was limited to application for letters of administration of the estate and effects of debtors of the said Tengku Ahmad and Tengku Ayesha was not a debtor of Tengku Ahmad.

16. With reference to paragraph 8 of the affidavit of Tengku Ahmad I state that the affidavit in support of the application for an order for the sale of the said land to KAF Land Sdn Bhd described Puan Khatijah and Che Rokiah as the natural issue of Tengku Ahmad when in fact they were adopted children. The Deceased was in fact never married, and I have been advised that there is no legal adoption recognized in Muslim Law.

17. No valuable consideration whatever had been paid by KAF Land Sdn. Bhd. or the said adopted daughters. The transfer purported to be a gift. The said lands are of considerable value and are estimated to be worth well over $1,000,000.00.

18. If the order is not set aside, the other next of kin and I would not be able to establish our claims to the said lands.

Wherefore I pray for an order in the terms of the Summons."

After having had the advantage of listening to the lengthy submissions of counsel in Chambers it seemed to me that the sole question for determination was this: Had the Applicant, Tengku Ibrahim, raised a triable issue or a serious question to be investigated as to whether upon a true construction of the Conveyance concerned, he, his sister Tengku Maheran, his cousins Tengku Noor Azar (f) and Tengku Zahara (f) like Tengku Ahmad Tajudin are next-of-kin of Che Rogoan?

It goes without saying that the answer to the above question will depend upon the meaning to be assigned to the words "next of kin" in the context in which they appear. Were they used in their strict common law sense or in their statutory sense? The question is as simple as that; if the former, then, clearly Tengku Ahmad Tajudin should take to the exclusion of all others; if the latter, then, he will have to share the disputed properties with Tengku Ibrahim, his sister and two cousins.

"Wills made by Muslims" says Prof. Datuk Ahmad Ibrahim at p.300 of his thorough and erudite work on *Islamic Law in Malaya* "are construed according to the principles of English Law and not according to Muslim Law." He cites an array of cases in support of this proposition of which I need refer to only three.

In *Re Alkaff Settlement*[1], the word 'male issue' was construed to mean "male descendants of males only".

In *Re The Estate of Haji Tamby bin Haji Mohamed Saleh*[2], the trustees were directed after twenty-one years from the testator's death to convert all the property of the deceased into money, "to divide the money so realized among my heirs as then ascertained according to Muhammadan Law" were construed according to the English Rules of Construction to mean "those persons who would be the testator's heirs according to Muslim Law if he had died at the expiration of twenty-one years from the actual date of death."

In *Re Shaikh Salman bin Abdul Shaikh bin Mohamed Shamee*[3], it was held that a trust in a settlement providing for distribution of the corpus after the expiration of the period of twenty-one years from the date when the youngest of the settlor's children (construed to include unborn children) shall live to attain the age of twenty-one years were invalid as it infringed the rule against perpetuities.

I was therefore of the opinion that this Conveyance should be construed according to the principles of English law, regard being had to the fact that at the time of its execution the English Statute of Distributions applied to Penang: *Lee Joo Neo* v. *Lee Eng Swee*[4].

I accordingly turned to consider English cases on the meaning of 'next-of-kin' and it seemed to me that they were directly relevant to the principal question in issue in these proceedings.

At common law, the expression 'next-of-kin' simpliciter does not have a technical meaning but merely denotes the most nearly related relative or kin. So, when a settlor gives his properly to 'next-of-kin' of himself or another, the expression is construed to mean next-of-kin in the strict sense of next in degree of kindred. The degrees of kindred are reckoned according to civil law both upwards to the ancestors and downwards to the issue, each generation counting for a degree. Thus, from father to son is one degree, from grand-father to grand-son, or vice versa, is two degrees and from brother to brother, two degrees, namely, one upwards to the father and one downwards to the other son. So, from uncle to uncle or nephew, or vice versa, is three degrees.

On the other hand, the expression 'statutory next-of-kin, indicates the persons who would be entitled to succeed to the property on intestacy and in the proportions and subject to the same conditions as they would have taken under the intestacy rules: *Re Hart's Will Trusts, Public Trustee* v. *Barclays Bank Ltd.*[5]; *Re Kilvert, Midland Bank Executor and Trustee Co., Ltd.* v. *Kilvert*[6]. However, a trust for the next-of-kin of the settlor need not contain an express reference to any statute regulating the distribution of the estates of intestates to entitle those persons to take who would have taken if the settlor had died intestate; an implied reference thereto would be sufficient: *Re Gray's Settlement, Akers* v. *Sears*[7]; *Re Jackson, Holliday* v. *Jackson*[8]; *Cotton* v. *Scarancke*[9]; *Eagles* v. *Le Breton*[10]. Where the

question is whether there is such an implication much will depend on the context: see, for example, *Williams* v. *Ashton*[11]. As Lord Herschell said in *Seale-Hayne* v. *Jodrell*[12], the rule as to giving the primary meaning to a word is not a hard and fast rule – it is entirely subservient to the context. It follows, therefore, that it would be wrong to assume that "technical words or words of known legal import" must, at all costs be given their technical meaning: the technical meaning must yield to a plan indication to the contrary in the context: (per Parke B. in *Doe d Winter* v. *Perratt*[13]). If I am right in this, then, the meaning of the critical phrase "to the next of kin of Che Rogoan" has to be determined by a meticulous consideration of the words in the Conveyance *as a whole, making the Conveyance its own interpreter.*

Clearly, had the trust been for the next-of-kin of Che Rogoan without more it would have meant a trust for her blood relatives so that Tengku Ahmad Tajudin would *prima facie* have taken to the exlusion of all others but the context of the Conveyance concerned does contain more. I refer to the bracketed words therein which read:

"(but so that the children of any such child who shall die before such survivor shall during the life of such survivor take equally between them the share which their parent would have taken if living)"

The effect of the above words is clearly to confer a gift on two or more persons with a substitutional gift to the children of such of them that shall die before the gift takes effect so that distribution takes place *per stirpes.* There is authority for saying that if a stirpal division is once indicated the Court will lean to a stirpal division throughout: *Re Smythe, Guiness* v. *Smythe*[14]. Also, a stirpal division is what applies to persons who take under the statutory rules of distribution on intestacy. Bearing this in mind, where, as here, a stirpal division is indicated, it is certainly at least arguable, even if not clear, that this is equivalent to a reference to the Statute of Distributions. In *Re Gray's Settlement* cited above, North, J. at page 805/6, said:

"Another case, *Smith* v. *Campbell*[7], was cited. The Master of the Rolls there said: "Even if the words were 'next of kin,' yet if there was nothing to shew that he had reference to the Statute of Distributions, *or to a division as in case of intestacy,* the inclination of my opinion would be, that the nearest in kindred only are entitled; and that brothers and sisters would exclude nephews and nieces from participating in such a bequest." So that he treats the two things as the same – a reference to the statute; that is, an express reference; *or a reference to division in case of intestacy, which he evidently thinks equivalent to a reference to the statute."*

(Emphasis supplied)

Mr. Davidson for Tengku Ibrahim raised two further issues: First, since the words in the Conveyance concerned clearly bespoke a class gift, when would the class of next of kin close? Would it be at the death of Che Rogoan or at the death of Che Ayesha? Second, and this was by way of alternative, even if the words next of kin are given their strict common law meaning, it did not necessarily follow that Tengku Ahmad Tajudin was entitled to the disputed properties. Che Rogoan's brothers and sisters (if any) might still come in depending on that side of the family tree and that this factor was never taken into account when the *ex parte* Orders of May 2, 1980 were made. So the argument ran.

It was unnecessary, and indeed it would have been wrong, for me to have decided at this stage of the proceedings whether Tengku Ibrahim's claims are valid in law. Suffice it to say that he had raised triable issues, or at least serious questions, to be investigated. Once this is accepted, then, it goes without saying that the *ex parte* Orders dated May 2, 1980 could not stand: see *Boyle* v. *Sacker*[15].

On a further ground also the application to set aside the *ex parte* Orders was bound to succeed. It is right to point out, at the risk of being trite, that the duty of a party applying *ex parte* is to make a full and fair disclosure to the Court of all facts which he knows and failure to do may itself be a ground for setting aside such an order: see *The Hagen*[16]; *Lazard Bros. & Co.* v. *Midland Bank*[17]. Having regard to my opinion that Tengku Ibrahim had raised triable issues or serious questions to be investigated there was a clear breach of this duty.

In these circumstances, I had no hesitation in giving Tengku Ibrahim leave to intervene, setting aside the *ex parte* Orders dated May 2, 1980 and making the necessary consequential orders for cancellation of the relevant memorials in the Interim Registrar and the Title Deeds. The disputed properties were thus reverted and restored to the status immediately prior to the *ex parte* Orders dated May 2, 1980 to enable the various parties to

establish their respective claims thereto. The application by KAF Land Sdn. Bhd. was, in consequence, dismissed. Lastly, I ordered costs of all three applications to be paid to Tengku Ibrahim.

*Order accordingly.*

Solicitors: *C.S. Ong & Co.; Azman & Davidson & Co.*

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## CHIN YOON & ORS. v. CHAIRMAN, RENT APPEAL BOARD, SEREMBAN & ORS.

**[O.C.J. (Peh Swee Chin J.) June 5, 1984]**
**[Seremban — Originating Motion No. 12 of 1983]**

*Administrative Law — Certiorari — Application to quash order of Appeal Board — Whether Appeal Board can refuse to supply notes of arguments — Notes of arguments not regarded as notes of evidence.*

The applicants in this case filed the Motion for issue of *certiorari* to have the order of Appeal Board, Seremban made under the Control of Rent Act, 1966 on April 9, 1983 quashed. What was filed consisted of the Memorandum of Appeal, the bare Order dated April 9, 1983 and the appeal record relating to the earlier proceedings before the Rent Tribunal for the Seremban District, but without the notes of arguments advanced by both the learned counsel before the learned Chairman of the Appeal Board. The Court was minded to call for a copy of the said notes of arguments from the Appeal Board. Learned counsel for the respondents objected to it.

The issue before the Court here was whether the Appeal Board could refuse to supply a copy of the notes of arguments advanced before it.

**Held:** (1) notes of arguments cannot be regarded or treated as notes of evidence, which is taken on oath or affirmation. Without having the notes of arguments, this Court would be somewhat hamstrung, and in this sense, the situation could be equated with having an incomplete record;

(2) the learned Chairman of the Appeal Board is therefore ordered to send in within 14 days, a certified copy of the said notes of arguments.

*Case referred to:*

(1) *R. v. Northumberland Compensation Appeal Tribunal, Ex Parte Shaw* [1952] 1 All E.R. 122, 130 & 131.

ORIGINATING MOTION.

*A.K.J.D'Cruz* for the applicants.
*N. Ramachandran* for the respondents.

*Cur. Adv. Vult.*

**Peh Swee Chin J.:** I have adjourned this matter earlier, mainly to consider a question of some importance relating to the practice and procedure of application for issue of *certiorari*. I now give my decision thereon.

The point arose in this way. The applicants herein have filed the Motion for issue of *certiorari* to have the order of Appeal Board, Seremban made under the Control of Rent Act, 1966 on April 9, 1983 quashed. What was filed consisted of the Memorandum of Appeal, the bare order dated April 9, 1983 and the appeal record relating to the earlier proceedings before the Rent Tribunal for the Seremban District, but without the notes of arguments advanced by both learned counsel before the learned Chairman of the Appeal Board. The Court was minded to call for a copy of such notes of arguments from the Appeal Board and asked counsel if they had any objection. Learned counsel for the respondents herein, objected to it, while learned counsel for the applicants herein, supported this, predictably. It transpired that the Appeal Board had not answered letters from the applicants herein requesting for a copy of the notes of arguments and grounds of decision, and it is reasonable to infer that the request has been refused.

The point of practice and procedure is as to whether the Appeal Board can refuse to supply a copy of the notes of arguments advanced before it.

Both counsel have concentrated their written submissions (which the learned counsel for the applicants herein has asked to be allowed in place of oral submission to the Court), on a point of preliminary objection first raised by the respondents herein, at the hearing in connection with some different matter. They have, by comparison, only skimmed over the surface on this question of notes of arguments by merely, on the part of respondents, objecting to the Court calling for copy of the notes of arguments, and on the part of the applicants, supporting it.

In my view, the answer is to be found in the well-known case of *R. v. Northumberland Compensation Appeal Tribunal, Ex Parte Shaw*[1]. Lord Denning in dealing with the nature of the record, in connection with application for *certiorari* to quash an error of law on face of record, held or suggested that if the record sent to the King's Bench was incomplete, the inferior tribunal in question might be ordered to complete it, i.e. to send in the other documents as desired, on the basis of cases cited and considered by his Lordship there and that such record must contain, to quote: "... at least the documents which initiate the proceedings, the pleadings, if any, and the adjudication, but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. ..."

Notes of arguments cannot be regarded or treated as notes of evidence, which is, of course, taken on